IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 443 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DY EXECUTIVE ENGINEER - Petitioner(s)

Versus

CHANDRAVADAN M PANDYA CARE OF ASHWINBHAI M PATEL - Respondent(s)

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Appearance :

MR RC JANI for Petitioner(s) : 1,
MR SAMIR J DAVE for Respondent(s) : 1,
MR MB PARIKH for Respondent(s) : 1,
MR MUKESH A PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 15/09/2005

ORAL JUDGMENT

1. The present petition, the petitioner employer i.e. Gujarat Water Supply and Sewerage Board has challenged

the legality of an award dated 20th September, 2000. By the impugned award the Labour Court was pleased to direct reinstatement of the workman with full back wages and continuity.

2. The respondent workman who was engaged as a Electrical Operator for a period from 7th October, 1991 to 13th January, 1992 had raised an Industrial Dispute about his alleged termination. The main defence of the petitioner employer was that he had voluntarily abandoned the service. The Labour Court did not accept the version of the petitioner. The Labour Court found that the termination is in violation of provisions of Section 25 F, G and H of the Industrial Disputes Act. Therefore, by the impugned order the Labour Court directed reinstatement of workman with continuity and full back wages.

3. It can be seen straight away that even as per the workman himself he was engaged only for a period between 7th October, 1991 to 13th January, 1992. He had,therefore, apparently not completed 240 days of actual work. The question of violation of provisions of Section 25 F of the Industrial Disputes Act, therefore, would not arise.

He however, stated in his statement of claim and also in his deposition before the Labour Court that at the time of his termination his juniors were retained and new persons were engaged after he was terminated and he was not recalled. He was not cross-examined by the employer on this aspect of the matter though, in the written statement the version of the workman on this score was denied. The observations of the Labour Court that there was a breach of provisions of Section 25 G & H of the Industrial Disputes Act appears to be justified. There are however important factors to the case which cannot be ignored while deciding what ultimate relief should be granted to the workman. As noted earlier he was engaged only for a period from 7/10/1991 to 13/1/1992. This has been admitted by him at more places than one. In his cross-examination also he admitted that after his termination at the pumping station, the pumping station has been closed down at Dhufaniya. The reinstatement with 100% back wages obviously, therefore, cannot be sustained. Considering the facts and circumstances and considering that the workman was engaged only for few months before his termination and shortly thereafter the work itself was wound up. I find it appropriate that the petitioner to pay a compensation of Rs.20,000/- to the

workman instead of reinstatement and full back wages directed by the Labour Court. In the result petition is allowed in part. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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